S.B.Civil writ petition No.5541/2004
Dr. Krishna Shanker & Ors

vs.
Dr. Durga Dutt & Ors.

DATE OF ORDER : - 13.12.2004

HON'BLE MR. PRAKASH TATIA,J.

Mr. Sunil Joshi, for the petitioner.
Mr. Rajesh Joshi, for the respondents.

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Heard learned counsel for the parties.

It appears from the facts of the case that plaintiff filed the suit for declaration and partition in the year 2003 and before framing of the issues by the trial court on 3rd Dec., 2004, the petitioner submitted an application supported by the affidavit and sought permission of the court to produce as many as 13 documents. The trial court rejected the application on the same day, i.e. on 3rd Dec., 2004, only on the ground that the explanation given for not filing the documents in time by the petitioner cannot be believed.

According to learned counsel for the petitioner, the petitioner has filed the suit for declaration as well as for partition and wants to produce certain documents, which are very much relevant and trustworthy documents and the documents were produced in the court

though after some delay. According to learned counsel for the petitioner, the trial court has passed absolutely non-speaking order. So far as relevancy of the document, which is the paramount consideration for passing the order for taking on record the documents as the delay in filing the documents can be condoned in case the documents are relevant, trustworthy and can help the court to decide the controversy between the parties properly, legally and that may advance the cuase of justice.

Heard learned counsel for the non-petitioners no.1 to 18 except non-petitioner no.11 and 12. Learned counsel for the petitioner submits that there is no conflict of the interest of the petitioner with the non-petitioners no.11 and 12 and the petitioner is contesting the petition against rest of the non-petitioners only.

According to learned counsel for the contesting non-petitioners, the petitioner in his application has not mentioned that the documents are relevant for deciding any controversy between the parties. The petitioner has not also given any details of the documents and the petitioner submitted as many as 3 applications before submitting these documents after framing the issues, but did not choose to produce the documents. Therefore, the trial court has not committed any error of jurisdiction in deciding the application. Hence, this court may not

interfere under Article 227 of the Constitution of India.

I considered the submissions of learned counsel for the parties. It is true that petitioner's application filed under Order 7 Rule 14(3) read with Section 151 CPC could have more details like the particulars of the documents specifically, but that defect cannot come in the way of the petitioner because of the reason that the documents themselves were submitted alongwith the application. So far as relevancy of the documents is concerned, the court could have applied its mind to this objection of the non-petitioner and the trial court has not rejected the application on the ground that the documents are not relevant for deciding any controversy between the parties. Therefore, so far as this objection of respondents is concerned, cannot be entertained and this court can look into the reason, which has been given by the trial court n its order for rejection of the application. The reason given by the trial court appears to be not well founded and a liberal view should have been taken to avoid the multiplicity of the proceedings. The trial court should have first examined whether the documents are relevant or not in the light of the pleadings of the parties and in the light of the arguments. The documents if are trustworthy, relevant and required to do justice normally they are to be taken on record even by condoning the delay. Here in this case, delay appears to be not of such nature on the basis of which even the court can refuse to consider the documents

themselves to find out whether they are relevant documents for deciding any controversy between the parties or not.

In view of the above, the writ petition of the petitioner deserves to be allowed, hence allowed. The order of the trial court dated 3rd Dec., 2004 is set aside. The trial court is directed to decide the application of the petitioner afresh in the light of the observations made above.

Learned counsel for the petitioner submits that petitioner's case is fixed tomorrow for evidence of the plaintiff and the petitioner will be ready to argue the application on merit afresh. Learned counsel for the non- petitioner submits that he will convey his local counsel to argue the same to avoid any further delay. The trial court is expected to hear the application tomorrow itself and if possible on a date only but the trial court could not postpone the decision before the evidence of the plaintiff. Both the parties are directed to co-operate the court for early disposal of the suit. In view of the fact that non-petitioner no.1 is about 95 years, both the parties submits that both the parties are interested in early decision of the suit. Hence, the trial court is requested to decide the suit as early as possible.

(Prakash Tatia), J.

c.p.goyal/-